

## **Senate Bill No. 328**

### **CHAPTER 517**

An act to add and repeal Section 20146 of the Public Contract Code, relating to public works contracts.

[Approved by Governor October 3, 2013. Filed with  
Secretary of State October 3, 2013.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 328, Knight. Counties: public works contracts.

Existing law provides that if the estimated cost of construction of any county building or the cost of any painting or repairs thereto, exceeds a specified sum, the work shall be done by contract and that any such contract not let pursuant to specified provisions is void. Existing law requires a board of supervisors to award the contract to the lowest responsible bidder. Existing law also authorizes a county, with approval of the board of supervisors, to utilize an alternative procedure for bidding on construction projects in the county in excess of \$2,500,000 and to award the project using either the lowest responsible bidder or by best value, as specified.

This bill would authorize a county, until January 1, 2018, with approval of the board of supervisors, to utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any building owned or leased by the county. The bill would provide that a construction manager at-risk contract may be used only for projects in the county in excess of \$1,000,000 and may be awarded using either the lowest responsible bidder or best value method, as defined, to a construction manager at-risk entity that possesses or that obtains sufficient bonding. The bill would require that subcontractors that were not listed by a construction manager at-risk entity as partners, general partners, or association members in a partnership, limited partnership, or association in the entity's construction manager at-risk bid submission, be awarded certain work by the construction manager at-risk entity in accordance with the process set forth by the county, as provided.

This bill would require a county that elects to use a construction manager at-risk contract to make a copy of the contract available for public inspection on its Internet Web site and to notify the appropriate policy committees of the Legislature with instructions on finding and accessing the stored contract.

*The people of the State of California do enact as follows:*

SECTION 1. Section 20146 is added to the Public Contract Code, to read:

20146. (a) A county, with approval of the board of supervisors, may utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any building owned or leased by the county. A construction manager at-risk construction contract may be used only for projects in the county in excess of one million dollars (\$1,000,000) and may be awarded using either the lowest responsible bidder or best value method to a construction manager at-risk entity that possesses or that obtains sufficient bonding to cover the contract amount for construction services and risk and liability insurance as may be required by the county. Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county.

(b) For purposes of this section, the following definitions apply:

(1) “Best value” means a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price.

(2) “Construction manager at-risk contract” means a competitively procured contract by a county with an individual, partnership, joint venture, corporation, or other recognized legal entity, that is appropriately licensed in this state, including a contractor’s license issued by the Contractors’ State License Board, and that guarantees the cost of a project and furnishes construction management services, including, but not limited to, preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.

(c) Subcontractors that were not listed by a construction manager at-risk entity as partners, general partners, or association members in a partnership, limited partnership, or association in the entity’s construction manager at-risk bid submission shall be awarded by the construction manager at-risk entity in accordance with the process set forth by the county. All subcontractors bidding on contracts pursuant to this section shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1. The construction manager at-risk entity shall do both of the following:

(1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the county.

(2) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with the procedure established pursuant to this section.

(d) A county that elects to proceed under this section and uses a construction manager at-risk contract for a building project shall make a copy of the contract available for public inspection on its Internet Web site and notify the appropriate policy committees of the Legislature with instructions on finding and accessing the stored contract.

(e) (1) If the county elects to award a project pursuant to this section, retention proceeds withheld by the county from the construction manager at-risk entity shall not exceed 5 percent if a performance and payment bond issued by an admitted surety insurer is required in the solicitation of bids.

(2) In a contract between the construction manager at-risk entity and any subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the county and the construction manager at-risk entity. If the construction manager at-risk entity provides written notice to any subcontractor that is not a member of the construction manager at-risk entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the construction manager at-risk entity, then the construction manager at-risk entity may withhold retention proceeds in excess of the percentage specified in the contract between the county and the construction manager at-risk entity from any payment made by the construction manager at-risk entity to the subcontractor.

(f) If the county elects to award a project pursuant to this section, the contract between the county and construction manager at-risk entity shall be subject to the provisions of subdivision (b) of Section 2782 of the Civil Code. Any contract between the construction manager at-risk entity and a contractor or subcontractor shall be subject to provisions of Section 2782.05 of the Civil Code.

(g) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.